THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION NO.6243 OF 2006

DATED: 02-01-2007

Between:

D. Sreeramulu Naidu

.. Petitioner

and

The Dy. Registrar of Co-operative Societies, Vizianagaram and others

.. Respondents

THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION NO.6243 OF 2006

ORDER:

This writ petition is filed seeking a certiorari to call for the records relating to orders dated 02-08-2006 passed in O.A.No.161 of 2004 and O.A.No.177 of 2004 on the file of the A.P. Co-operative Tribunal at Visakhapatnam wherein the Surcharge Order dated 12-06-2000, passed by the Deputy Registrar of Co-operative Societies/ Divisional Co-operative Officer, Vizianagaram, in S.C.No.2 of 1998 was confirmed.

It appears, the petitioner was the President of Kummapalli Primary Agricultural Co-operative Society, Kummapalli village of Vizianagaram District. While so, an enquiry under Section 51 of the A.P. Co-operative Societies Act, 1964 (fort short 'the Act') was launched and the Enquiry Officer submitted his report dated 30-07-1996 *prima facie* making the petitioner liable to certain amounts purported to have been misappropriated by him. Thereafter, surcharge proceedings under Section 60 (1) of the Act were initiated and the Surcharge Authority passed an order dated 12-06-2000 fixing the liability against the petitioner and one Visweswara Rao, Secretary of the Society for payment of an amount of Rs.4,12,300/- jointly and severally. Aggrieved by the same, the petitioner carried the matter in appeal before the A.P. Co-operative Tribunal, Vijayawada in O.A.No.60 of 2000. The same was dismissed for default and the auction notice in Form No. VI was issued by the 1st respondent. On that, when the

petitioner enquired, he came to know that all the matters pending before the Co-operative Tribunal, Vijayawada were transferred to Co-operative Tribunal at Visakhapatnam. Then the petitioner filed a petition before the Co-operative Tribunal, Visakhapatnam to set aside the order of dismissal for default. The same was allowed and the appeal was restored to file and renumbered as O.A.No.177 of 2004. In the meanwhile, the petitioner filed another O.A. bearing O.A.No.161 of 2004 before the A.P. Co-operative Tribunal, Visakhapatnam against the auction notice issued by the 1st respondent. Both the appeals were clubbed since the cause in both the cases and the appellant are one and the same. The appellate authority, after detailed consideration of the matter, dismissed the appeals confirming the order passed by the Surcharge Authority. Aggrieved by the same, the present writ petition is filed.

The learned counsel for the petitioner strenuously contended that absolutely there is no independent evidence collected by the Surcharge Authority for coming to the conclusion that the petitioner has caused loss to the assets of the society to the tune of Rs.4,12,300/-. It is the contention of the learned counsel for the petitioner that except the enquiry report under Section 51 of the Act and some records here and there, no independent evidence is available to come to a conclusion that the enquiry conducted under Section 51 of the Act is true and correct. It is his further contention that except relying upon the report under Section 51 of the Act, the Surcharge Authority has not done any further enquiry.

The learned counsel for the Society as well as the learned Government Pleader appearing for the official respondents supported the order passed by the Authority as confirmed by the Appellate Authority and further submitted that they have not committed any error

calling for interference of this Court under Article 226 of the Constitution of India.

Heard the learned counsel for both sides. Perused the impugned order and other material available on record.

There is no necessity to go into all the details. A bare perusal of the Surcharge Order passed by the Deputy Registrar of Co-operative Societies, Vizianagaram under Section 60 of the Act would reveal that except relying upon the report of the Enquiry Officer under Section 51 of the Act, no other independent evidence has been collected. The Enquiry Officer was not examined before the Court for the purpose of verifying the records and also as to the genuineness of the report submitted by him. Thus, the defendants therein have no opportunity of cross-examining him. The Appellate Authority also simply stated that the matter relates to misappropriation of funds of Kummapalli P.A.C.S. by its Ex-President and Secretary by way of benami loans and further stated that 'the Enquiry Officer has recorded that he had examined the depositions of the members though they have denied and also examined whether the signatures of the members on loan bonds and other documents tally with the signatures obtained before him. The signatures on the loan bonds have not been tallied. As regards thumb impressions, he obtained the specimen thumb impressions and verified whether they tally or not. The L.T.Is. are also not tallied with those on all the loan bonds specified in the Annexure-1 to the best of knowledge'. It was further noticed by the Appellate Authority that the enquiry report shows that an enquiry was conducted calling upon the Ex-President and Secretary of the Society to file their objections and the Surcharge Authority recorded that the Ex-President and Secretary were called upon to file their objections on the proposed action under Section 60 of the Act. Both of them received the notice and on their

request, the copies of the enquiry report were furnished to them and again called for the objections, if any, against the proposed Surcharge Proceedings. Except stating this, the Appellate Authority has not recorded any independent evidence. As contended by the learned counsel for the petitioner, neither the Enquiry Officer was examined before the Court nor any opportunity was given to the petitioner to cross-examine the witnesses. The whole case is proceeded only on the basis of the Enquiry Officer's report and some records here and there and no one was examined to prove the case of the Department.

Under the above said circumstances, I deem it appropriate to set aside the Surcharge Order as confirmed by the Appellate Authority and remand the matter to the Surcharge Authority for fresh consideration. The Surcharge Authority shall allow both the parties to lead evidence, both oral and documentary if any necessary as per law, and dispose of the matter within a period of six months from the date of receipt of a copy of this order.

With the above said direction, the writ petition is disposed of. There shall be no order as to costs.

C.V. RAMULU, J

2nd January 2007.

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